

STATE OF MICHIGAN
COURT OF APPEALS

NICHOLAS S. ONICA and THERESA L.
ONICA,

UNPUBLISHED
February 28, 2006

Plaintiffs-Appellants,

v

THOMAS HAIDERER and DONNA
HAIDERER,

No. 257739
Genesee Circuit Court
LC No. 03-077125-NO

Defendants-Appellees.

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review the trial court's ruling on a motion for summary disposition de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Plaintiff Nicholas S. Onica was standing on top of a silo on defendants' property when he lost his balance and fell off. The parties do not dispute that Onica was an invitee on the premises. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591; 614 NW2d 88 (2000). "A premises owner owes, in general, a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Kenny v Kaatz Funeral Home*, 264 Mich App 99, 105; 689 NW2d 737 (2004), rev'd on other grounds 472 Mich 929 (2005). "The care required extends to instrumentalities on the premises that the invitee uses at the invitation of the premises owner." *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995). The duty extends

to conditions known to the landowner and those which he should have discovered by the exercise of reasonable care. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995).

Plaintiffs alleged that the silo was defective and thus created a dangerous condition because (1) the ladder had missing or makeshift rungs, (2) the roof was unstable, and (3) there were bee and wasp nests on the roof. No evidence showed that the ladder was in disrepair. Onica could not causally connect either the condition of the roof or the presence of bee and wasp nests to his fall. If the plaintiff fails to establish a causal link between the accident and any negligence on the part of the defendant, summary disposition is proper. *Pete v Iron Co*, 192 Mich App 687, 689; 481 NW2d 731 (1992). Plaintiffs' expert testified that the silo was unreasonably dangerous because the ladder did not meet various standards mandated by the Michigan Occupational Safety and Health Act (MIOSHA), MCL 408.1001 *et seq.*, and the federal Occupational Safety and Health Act (OSHA), 29 USC 651 *et seq.*, particularly with respect to guardrails extending over the roof from the top of the ladder. Those acts regulate safety in the workplace, MCL 408.1002(1); 29 USC 653(a), and impose a duty on employers to provide a safe workplace. MCL 408.1011; 29 USC 654. They do not impose a statutory duty in a negligence context. *Ghaffari v Turner Constr Co*, 259 Mich App 608; 676 NW2d 259 (2003), *rev'd on other grounds* 473 Mich 16 (2005). Therefore, plaintiffs failed to establish a breach of duty on the part of defendants that was causally connected to the injuries sustained by Onica.

Affirmed.

/s/ Stephen L. Borrello
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald